IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 892 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHER NARAN DEVARABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
NANAVATY ADVOCATES for Appellant(s) : 1,
MS HANSA PUNANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/12/2007

ORAL JUDGMENT

1. The appeal arises out of judgment and order dated 10.9.1997 passed by learned Special Judge, Junagadh in Atrocity Sessions Case No.892/1997.

2. The appellant herein was the original accused who was charged with offences punishable under SectionS 324, 323, 504 of the Indian Penal Code and Section 3(1)(10) of Schedule Castes and Schedule Tribes(Prevention of Atrocities) Act(here-in-after referred to as “the Atrocities Act”)

3. As per the prosecution case, on 27.7.1992 when the complainant Jivabhai had in an open ditch gone for toilet, the accused appellant herein quarreled with him using derogatory words against his caste and gave him one blow with blunt portion of his Axe on the head of the complainant and also gave other injuries.

4. The complainant Jiva Dana-PW2 was examined at exh.8. He stated that on 27.7.1992 at about 9:30 in the morning when he had sat down to go to toilet in a ditch, the appellant came there and abused him and asked him why he was easing himself there. When the complainant said that this is an open land, the appellant got excited, used derogatory language against his caste and gave one blow with an Axe from the blunt portion on his head. He was also hit on the back and on his thigh. At that time, one Sakra Deva came there and saved the complainant. He was thereafter, taken by his mother in rickshaw to the hospital.

5. Sakra Deva-PW3 was examined at exh.10. He stated that on the date of incident between 9 to 10 O' clock he was going to the toilet when he saw that the appellant was beating Jivabhai. He had an Axe in his hand. He saw the incident from a distance of about 25 to 30 ft. He requested the appellant not to beat the complainant. Jivabhai was bleeding. Upon being asked, he said that since he had gone to toilet, the appellant had beaten him.

6. Natha Menand-PW5 was examined at exh.12. He stated that on the date of incident at about 9:30 in the morning, he heard the complainant shouting that Naran Devrakhi(i.e. the appellant) was beating him. He was rushed to the spot and found that Jivabhai was squatting. He had therefore, taken Jivabhai to his mother.

7. Laxmiben Danabhai-PW4 was examined at exh.11. She is Jivabhai's mother. She had not witnessed the incident. She however, stated that she had taken her son in Rickshaw to the hospital.

8. Dr. Maganlal Gordhanbhai-PW1 was examined at exh.6. He had treated the injured complainant. He was the medical officer on duty at Manavdar P.H.C. on 27.7.1992. The patient was brought to him at 10:35 a.m. He found the following injuries on his body :

   1) On the back portion of the head on the right

hand side one C.L.W. of 4cm x 2cm x 1cm.

2) On the back portion of right thigh one wound of 6cm x 3cm.

3) Patient was complaining about severe pain in the stomach.

8.1 He opined that the injuries could have been caused by hard blunt substance. He stated that the patient was discharged from the hospital on 30.7.1992.

8.2 In the cross examination, he had agreed that in the Injury Certificate he has not mentioned the history regarding the injury. He stated that the injuries were all simple in nature. He agreed that such injuries could be caused by a person falling down on stones.

9. From the above evidence prosecution had sought to establish the charge.

10. Learned Special Judge convicted the appellant of offences punishable under Section 324 of the Indian Penal Code and Section 3(1)(10) of the Atrocities Act and imposed simple imprisonment of six months for each of the offence and fine of Rs. 1000/- and Rs. 250/- respectively. He however, made the substantive sentence concurrent.

11. Having heard learned advocates appearing for

the parties in this appeal, I find the learned Judge committed no error in passing the impugned order.

12. The fact that the appellant had assaulted the complainant with an Axe and caused injury is established through reliable evidence on record. This is brought on record through the injured complainant Jivabhai-PW2. His version is well supported by the eyewitness Sakara Deva-PW3 and witness Natha Menand-PW5. Natha Menand-PW5 may not have witnesses the entire incident, nevertheless, he had reached the spot within seconds of the complainant being beaten.

13. The evidence of these three witnesses is corroborated by the medical evidence in the form of deposition of Dr. Maganlal-PW1. He had treated the injured and found injuries corresponding to those described by the complainant and other witnesses. Mother of the complainant Laxmiben-PW4 also stated that she had taken her son to the hospital in a Rickshaw.

14. Under the circumstances, learned Judge committed no error in convicting the appellant under Section 324 of the Indian Penal Code. It is true that the recovery Panchnama of the weapons involved in the offence could not be proved before the Court on account of both the witnesses turning hostile. This however, would

not dent the prosecution case.

15. With respect to the insulting words used by the appellant also, there is clear evidence of the complainant himself. His conviction under Section 3(1)(10) of the Atrocities Act was therefore, justified. It is true that other witnesses namely Sakra Deva-PW3 and Natha Menand-PW5 did not state in their deposition that the appellant had used those words against the complainant. However, these persons had at the best witnessed the incident from some distance. No suggestion was put forth by the defence whether they were in the hearing range and they could follow the entire conversation between the appellant and the complainant. In absence of any such suggestion, the evidence of these witnesses can be easily reconciled. Thus, deposition of the complainant to the effect that the appellant had used insulting and humiliating words against him since he belonged to the Schedule Caste, cannot be discarded.

16. In the result, I find that learned Judge was justified in convicting the appellant also under Section 3(1)(10) of the Atrocities Act. It may be noticed that under the Atrocities Act minimum punishment is of six months and that it is not possible to grant probation to an offender who is convicted of offence punishable under the Atrocities Act.

17. In the result, appeal fails. Same is dismissed. Bail stands cancelled. The appellant shall however have time upto 1.2.2008 to surrender before the authority.

(Akil Kureshi,J.)

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